



National Incident Management System (NIMS)

ICS Compliance in Indiana: An Overview
Division of Planning and Assessment

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Introduction

The Indiana Department of Homeland Security (IDHS) has prepared this document with the intent to clarify the importance and relevancy of compliance with the National Incident Management System (NIMS). This overview stands as the first in a series of documents to be produced by the IDHS Planning and Assessment Division regarding NIMS compliance in Indiana.

The application of NIMS standards by public safety entities promotes interoperability and compatibility among emergency responders at the national, state and local levels and provides these employees with a safer work environment. In addition, the receipt of federal and state preparedness grants has become contingent upon the adoption and implementation of NIMS compliance objectives. The failure to adopt and implement NIMS standards most commonly results in the loss of access to federal grant funding and potential fines from the Indiana Occupational Safety and Health Administration (IOSHA). More severe, but much less common, results are the serious injury or death of emergency responders or disaster victims. These results also can create the potential for civil litigation. Of course, anyone can choose to sue an emergency response agency and/or its personnel and any lawsuit will require the expenditure of both financial and non-financial resources, but the use of NIMS standards can substantially reduce the risk of a court imposing liability. IDHS supports this federal effort to improve the safety and efficiency of all first responders in the State of Indiana. IDHS does not regulate or enforce NIMS compliance, but rather, IDHS provides emergency responders with compliance assistance to prevent grant ineligibility and litigation issues.

IDHS serves to assist public safety entities in completing their requirements for NIMS compliance, IDHS does not enforce compliance.

Background

National Incident Management System compliance is a requirement from the federal government and enforced through performance standards, such as those established by OSHA and preparedness grant qualifications. United States Department of Homeland Security (USDHS) Presidential Directive 5 prompted the nationwide implementation of NIMS for the federal government on February 28, 2003.¹ OSHA requirements under 29CFR 1910.120 and compliance directive CPL: 02-02-073 instructed that the Incident Command System (ICS) be used during incidents covered by these directives. Furthermore, Governor Daniels directed state agency NIMS compliance on January 10, 2005 through Executive Order 05-09.²

NIMS compliance has been federally mandated through USDHS Presidential Directive 5 and established in the State of Indiana through Executive Order 05-09.

Compliance Directives

Homeland Security Presidential Directive (HSPD) 5 serves to enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system. The objective of this directive is to ensure all levels of government can work together efficiently and effectively to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters and other emergencies regardless of cause, size or complexity.³ HSPD 5 also stipulates NIMS compliance as a requirement to receive preparedness awards in the form of grants, cooperative agreements and direct contracts. Grant making agencies that offer preparedness grant funding and who receive compliance reports from the NIMS Integration Center are:

- Department of Homeland Security (DHS)
- Department of Health and Human Services (HHS)
- Federal Emergency Management Agency (FEMA)
- Department of Justice (DOJ)
- U.S. Fire Administration (USFA)
- Department of Education (DOE)
- Department of Transportation (DOT)
- Environmental Protection Agency (EPA)
- Nuclear Regulatory Commission (NRC)
- Department of Agriculture (USDA)
- Department of the Interior (DOI)

Indiana Executive Order 05-09 establishes the National Incident Management System as the State standard for incident management. In order to assist IDHS in carrying out its responsibilities, Executive Order 05-09 denotes the state agencies that shall immediately designate one or more senior officials to act as their agency's emergency management coordinator for all emergency and disaster matters. The Order also emphasizes that all state agencies, departments, commissions, bureaus, institutions and other authorities in state government shall cooperate to the fullest extent possible with the executive order.⁴

Local agencies are not legally bound to comply with NIMS metrics; however it is mandatory in order for them to receive public safety preparedness funding from the agencies mentioned above. According to the Homeland Security Grant Program (HSGP), States are required to submit an annual preparedness report in order to receive FEMA administered Federal preparedness assistance. A NIMS compliance assessment is necessary as part of the report. State and local governments are considered to be in full NIMS compliance if they have adopted

A more detailed list of specific preparedness grants affected by NIMS compliance is available from IDHS or FEMA. IDHS suggests reviewing the list to be aware of the possible impact of NIMS non-compliance.

The State agencies bound to comply with Executive Order 05-09, and subsequently NIMS standards, are listed in section 14 of the Order.

and/or implemented the required NIMS compliance activities for that particular fiscal year.⁵

The OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) standards integrate the Incident Command System (ICS) for emergency response. Hazardous materials technicians must be able to function within an assigned role in the ICS. OSHA Inspection Procedures for 29 CFR 1910.120 and 1926.65, under Paragraph (q): Emergency Response to Hazardous Substance Releases, Section XII.B.1 recognizes the Incident Command System, as defined by NIMS, as compliant with HAZWOPER standards under this section. Failure to follow these OSHA requirements can result in severe fines and loss of resources. The OSHA General Duty Clause may also come into play subsequent to a disaster or emergency. An employer can be cited for violation of this clause if a recognized serious hazard exists in its workplace and the employer does not take reasonable steps to prevent or abate the hazard.⁶

Failure to establish an ICS has induced fines and penalties from IOSHA to various Indiana emergency response entities. IOSHA continues to investigate and enforce incident command procedures as they relate to workplace safety requirements.

The OSHA Division of the Indiana Department of Labor (IOSHA) has reported violations and implemented fines for deficient Incident Command System policies and procedures. According to IOSHA, these violations increased the potential for illness or injury resulting from an accident. One instance reported in a Safety Order and Notification of Penalty from early 2007 revealed the employer, an anonymous Indiana volunteer fire department, selected to establish a fire brigade, and a statement or written policy was not maintained which established their basic organizational structure. The Safety Order and Notification of Penalty continued to further cite the volunteer fire department for a lack of training and education regarding incident command procedures, among other infractions. NIMS standards establish the Incident Command System (ICS) as the standardized incident organizational structure for the management of all incidents and institutionalize the use of ICS across the entire response system. Implementing these standards and complying with NIMS objectives, including the required training, would have prevented these serious violations and their subsequent fines.

Liability Exposure

The field of Emergency Management continues to evolve and incident commanders now have added responsibility and can encounter significant consequences due to the non-compliance of their response team. This trend was discussed in a *Fire Chief Magazine* 2004 article. According to the article, "...lawsuits are

being filed against fire departments and against incident commanders personally, alleging violation of constitutional rights for failure to follow safety policies.”⁷

An example used in the article occurred in 2003, when a District of Columbia (D.C.) federal judge ordered an incident commander and two other officers to stand trial for a lawsuit filed as a result of the death of two D.C. firefighters killed in the line of duty. In this circumstance, the judge failed to accept governmental immunity and refused to dismiss the case. The court order states, “...the named defendants ‘either committed, or by virtue of the policy of the D.C. Fire Department, allowed or established an operational environment that enabled numerous violations of the mandatory Standard Operating Procedures to occur ...’”⁸

IDHS recommends that each department consult their legal advisor about any potential liability from failing to become NIMS compliant and properly implementing the approved Incident Command System.

The above liability exposure could have been diminished through the fire department’s NIMS compliance. An emergency or disaster can prompt legal inquiries concerning required training, certifications, departmental operational procedures and the use of an incident command system. The adoption of NIMS by an overwhelming majority of emergency response groups would be strong evidence to a court of law that it should hold all similar organizations to these operational standards in establishing liability for death, serious injury or property damage resulting from a response action. Achieving NIMS compliance is evidence that the response organization complied with nationally recognized regulatory standards and attempted to mitigate potential hazards to the emergency responders. This effort to adopt and implement nationally recognized standards and effect mitigation not only reduces exposure to legal claims, but improves life safety and the preservation of property, both of which become natural byproducts of legal protection through NIMS compliance.⁹

Why NIMS

The expectations of the National Incident Management System are more than simply a list of requirements from the federal government. Jason J. Zigmont of *VolunteerFD.org* recognizes this position, “NIMS is a program that can actually help the departments that use it. While it may look like another hoop to jump through, the benefits outweigh the costs, time, and effort that it will take to implement.”¹⁰ NIMS was designed to be a new approach to incident management and an integral and essential element of training and performance for all levels of emergency response personnel. Most emergencies are addressed on the local level; however large scale incidents may require help from other

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- Jason J. Zigmont, *VolunteerFD.org*

“Trying to learn (how to communicate) at the scene of the incident is too late.”

- Chief Gerald George, Pike Township Fire Department, President - Indiana Fire Chiefs Association

Promoting interoperability and compatibility throughout all levels of response in order for multiple jurisdictions, the state, and the federal government to efficiently and effectively assist local communities is a key NIMS objective.

NIMS standards not only improve emergency responders' capabilities to protect and respond to the community they serve, but also improves their own safety and security.

jurisdictions, the state, and/or the federal government. Therefore, it is critical that local public safety agencies both implement NIMS within their jurisdictions, as well as ensure that they are ready to communicate and support NIMS compliance at all levels of government in the event of a significant or wide spread crisis. Gerald George, Fire Chief of the Pike Township Fire Department in Indiana, agrees with the importance of NIMS compliance at all levels:

Everyone being NIMS compliant is very important at every level of the emergency response field. I have been in the fire service for over 30 years and the Incident Command System has come a long way. We need to continue to educate the entire emergency response field, because it not only affects emergency responders, but affects everyone that will be responding on a large scale emergency. It is very important that we all speak the same language when we respond under these conditions. Trying to learn it at the scene of the incident is too late.¹¹

The benefits from the NIMS objectives are most prominent at the local level. A community's response to an incident requires a collective effort between multiple organizations including law enforcement, public health, fire, public works and emergency medical services, to name a few. NIMS standards allow for these community entities to come together and work more efficiently and effectively to prepare for and respond to an incident. Moreover, when an incident escalates and a community requires support from other jurisdictions, including the state or the federal government, the nationally implemented NIMS framework creates an environment of interoperability and compatibility among all potential levels involved. The successful collaboration of these response agencies and jurisdictions, as well as their respective resources, under NIMS has become the standard communities depend on and deserve.

The consequences of disregarding NIMS objectives not only impacts the community being served, but can increase the operational dangers of public safety employees. An anonymous report submitted by a rural Indiana volunteer firefighter exemplifies a situation where the lack of incident command almost culminated in the severe injury or death of several firefighters. The incident involved a fire brigade arriving on scene as multiple personnel from another department were already on site and actively fighting an attic fire. Soon after, an unknown number of men from the two different departments had occupied the attic.

Additional men were also positioned in front of the house to construct a ventilation hole. The firefighter reported the following:

As I walked to the rear of the structure, I observed a ladder leaning against the lower rear flat roof. The roof was not visible due to heavy smoke. I asked a ground firefighter how many firefighters were on the flat roof. He did not know. I asked how many minutes have they been out of contact. He did not know. I climbed the ladder to investigate the status of our men. The attic ignited after the ventilation hole was cut in the front of the house. I reached the top of the ladder to find a man stumbling out of the rear of the attic, his air tank was empty. He was able to communicate that he could not see the ladder and could not clear the smoke for clean air. While assisting him to the ladder the flat roof became soft and melting under our feet. After removing the personnel from the roof, it caved in shortly after as the flames consumed the home. The man assigned to the bottom of the ladder had left. He was from a different department. He was unaware of the firefighter stranded on the roof.¹²

Implementation of an incident command structure, as required by NIMS, may have been able to help a volunteer firefighter and his colleagues diminish or avoid a dangerous situation that was amplified by a lack of situational awareness.

It is important to recognize the bravery and the ability to adapt displayed by the firefighter reporting the account. However, use of an incident command in this scenario may have negated the need for such a dangerous reaction. The use of the incident command system would have improved communication and increased the situational awareness of all responders involved. The firefighter acknowledged that the poor choices to leave the watch at the foot of the ladder, the decision to stay in the attic after the tank bell sounded, and the independent decision to cut ventilation without knowing the position of the interior firefighters, all played a role in this operational failure.¹¹ These choices were mistakenly based upon operational decisions originating from separate entities without shared communication. A single authoritative source, with knowledge of the overall situation, as part of an incident command organizational structure would have greatly improved the operational safety and success.

Conclusion

The directives and regulations promoting NIMS compliance have been clearly established. The potential liability exposure of NIMS non-compliance is compelling. The positive impacts of NIMS on the effectiveness and efficiency of emergency management are overwhelmingly evident. However, the effort to implement NIMS in Indiana continues to have some resistance. This resistance

typically stems from a lack of clarification of training and implementation requirements.

The Indiana Department of Homeland Security understands added training is not always convenient or welcomed, especially given the amount of training already required in the field of public safety. As a reaction, the majority of NIMS training is offered online and can be taken at the participant's convenience. The higher level courses requiring classroom training only apply to those within a response entity who will conceivably assume a management, team leader, command staff or Emergency Operations Center (EOC) staff role during an incident. The determination of which personnel need this advanced level of training is the responsibility of the individual departments, agencies and jurisdictions. This decision maker is also responsible for justifying those decisions if challenged by USDHS, OSHA or a court of law. NIMS training was not intended as a supplement to traditional training, but as a fundamental training standard for the entire spectrum of emergency responders.

NIMSCAST is designed to assist emergency management entities by providing a comprehensive self-assessment support tool. NIMSCAST assists in reporting the compliance achievements of a public safety entity's NIMS implementation activities in a uniform and efficient method.

A majority of NIMS objectives are already a major component of public safety organizations' protocol, and implementing the remaining objectives will only serve to improve emergency management efficiency. Clarifying, identifying and reporting these implementations of NIMS standards has been simplified in the National Incident Management System Compliance Assistance Support Tool (NIMSCAST). In addition, IDHS continues to offer assistance and advice to every entity in the State regarding NIMS metrics requirements.

More prevalent than the resistance that exists, is the recognition of the need and relevance of the National Incident Management System standard in Indiana. Adrian Ellis has been the Emergency Management Agency (EMA) Director of Fayette County, Indiana since 1996 and welcomes this new standard in emergency response. As a rural volunteer firefighter for several years prior, Mr. Ellis witnessed territorial friction among departments and a lack of multi-agency operational direction throughout the emergency response field. He credits NIMS as a means to resolve these issues:

“We needed a standard, and its here and it's called NIMS.”

- Adrian Ellis, Fayette County EMA

That is the beauty of NIMS; it provides a clearly defined, vertical structure of command. This can prevent turf wars and open up the opportunity to learn from others. Without direction, sometimes when trying to do good, we do harm. NIMS right now is the best thing going and has us heading in the right direction. It does not matter what size or type

the incident is, NIMS works as long as you are thoroughly trained. We needed a standard, and its here and it's called NIMS.¹³

For more information, go to www.fema.gov or to www.in.gov/dhs and click on the NIMS link. You may also contact the IDHS NIMS point of contact David Barrabee at dbarrabee@dhs.in.gov or the IDHS Division of Planning and Assessment.

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